IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.11721 OF 2006**

DATE OF DECISION: May 15, 2007

BALJINDER SINGH ...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR.
HON'BLE MR. JUSTICE L.N. MITTAL.

PRESENT: MR. M.L. SACHDEVA, ADVOCATE FOR THE PETITIONER.
MR. SALIL SAGAR, ADDL. A.G. PUNJAB FOR RESPONDENTS NO. 1 & 2.
MR. NIRMAL SINGH, ADVOCATE FOR RESPONDENT NO.3.

J.S. KHEHAR, J. (ORAL)

The petitioner was appointed as a Director of Physical Education and in the aforesaid capacity, his services were regularized on 1.10.1980. Respondent No.3 was also appointed as a Director of Physical Education in the year 1997. On account of the earlier appointment of the petitioner, it is the vehement contention of the learned counsel for the petitioner that in the cadre of Directors of Physical Education, the petitioner must be treated as senior to respondent No.3. This factual position is not a matter of dispute between the rival parties.

The grievance of the petitioner has emerged from the impugned order dated 2.6.2006 (Annexure P-7). A perusal of the aforesaid order reveals that respondent No.3 has been posted as Assistant Education Officer for Sports. According to the learned counsel for the petitioner, the claim of the petitioner ought to have been considered before respondent No.3 on account of his superiority over the respondent No.3, in view of his higher position in the seniority list.

As against the aforesaid contention of the learned counsel for the petitioner, counsel for the respondents have placed reliance on the provisions of Punjab State Education Class-III (School Cadre) Service Rules, 1978 (hereinafter referred to as 1978 Rules). Our attention has been invited to Appendix-B, wherein the post of Assistant Education Officer for Physical Training appears at Sr. No.4. From Appendix-B, it is sought to be asserted on behalf of the respondents that the post of Assistant Education Officer for Physical Training is to be filled up 100 % by way of direct recruitment. It is, therefore, the contention of the learned counsel for the respondents that the claim made by the petitioner for the consideration of his claim for appointment against the post of Assistant Education Officer for Physical Training, on the basis of his higher position in the seniority list in the cadre of Directors of Physical Education, is wholly misconceived. It is also the contention of the learned counsel for the respondents that ever since the promulgation of 1978 Rules and the amendment thereof, from time to time, the posts of Directors of Physical Education, as well as, the post of Assistant Education Officer for Physical Training, have been placed in the same pay scale. It is, therefore, the contention of the learned counsel for the respondents that it is misconceived for the petitioner to assert that respondent No.3 has been assigned duties and responsibilities which are of a higher status through the impugned order dated 2.6.2006 (Annexure P-7).

We have considered the contentions of the rival parties. As have been noticed hereinabove, one cannot overlook the fact that members of the cadre of Directors of Physical Education have no right to claim posting or promotion against the post of Assistant Education Officer for

Physical Training. This conclusion of ours is based on the fact that under 1978 Rules and the subsequent rules framed from time to time, the post of Assistant Education Officer for Physical Training is to be filled-up 100% by way of direct recruitment. In such circumstances, we are satisfied that petitioner can not claim posting or promotion as Assistant Education Officer for Physical Training as of right. Even otherwise, it is not possible for us to accept the contention of the learned counsel for the petitioner on account of the fact that the action of the respondents for posting respondent No.3 as Assistant Education Officer for Physical Training, cannot be considered as an act by which the authorities vested a higher or superior position in respondent No.3. This conclusion of ours, is based on the fact that ever since the promulgation of 1978 Rules, till date, the post of Directors of Physical Education as well as the posts of Assistant Education Officer for Physical Training are in the same pay scale.

For the reasons recorded above, we find no merit in the writ petition and the same is dismissed.

(J.S. KHEHAR)
JUDGE

May 15, 2007
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(L.N. MITTAL)
JUDGE